court for an order calling upon the advocate and solicitor concerned to show cause.

One would have thought that a member of this honourable profession would welcome an opportunity being given to the disciplinary committee to clear his name before being dragged into court. Even if the disciplinary committee's report be against him, he does not automatically suffer serious injury. On the contrary he would receive the report in which he would get the benefit of knowing the precise evidence alleged against him and be prepared for his defence.

In the circumstances of this case, the respondent's motion is dismissed with costs.

Motion dismissed.

Solicitors: *Chin & Fernandez.*

TAN HIN JIN & ANOR. v. PRABHULAL G. DOSHI

[O.C.J. (Abdul Hamid J.) September 24, 1970]

[Kuala Lumpur — Originating Motion No. 28 of 1970]

Administrative Law — Certiorari — Mandamus — Error on the face of record — Decision of Appeal Board for Federal Capital — Control of Rent Act, 1966, s. 6.

Interpretation — Statute — Control of Rent Act, 1966 — Alleged misconstruction of s. 6(c) by appeal board.

The applicants applied for an order for *certiorari* to remove and quash a decision by the Appeal Board for the Federal Capital of Kuala Lumpur whereby the fair rent of certain premises was determined at $600 per month; and for an order of *mandamus* that the said board do rehear and redetermine the matter. It was alleged that the board had acted contrary to law in taking into consideration the fact that the tenant had carried out substantial repairs and maintained the premises in good condition in coming to their decision and that there was an error on the face of the record in this case.

Held, dismissing the application: on the face of the record, there was nothing to show that the appeal board had acted erroneously and outside its jurisdiction and therefore the application must be dismissed.

Cases referred to:-

(1) *R.* v. *Northumberland Compensation Appeal Tribunal, Ex parte Shaw* [1951] 1 All E.R. 268 at p. 269.

(2) *R.* v. *Northumberland Compensation Appeal Tribunal, Ex parte Shaw* [1952] 1 All E.R. 122.

(3) *R.* v. *Furnished Houses Rent Tribunal for Paddington and St. Marylebone Ex parte Kendal Hotels Ltd.* [1947] 1 All E.R. 448.

(4) *R.* v. *Agricultural Land Tribunal for the South Eastern Area, Ex parte Bracey* [1960] 2 All E.R. 518.

ORIGINATING MOTION.

Kok Wee Kiat for the applicants.

S. Y. Chan for the respondent.

Cur. Adv. Vult.

Abdul Hamid J.: This is a motion asking the court to make —

(a) An order of *certiorari* to remove into the High Court and to quash a decision made by the Appeal Board for the Federal Capital of Kuala Lumpur dated 8th December, 1969 whereby the fair rent of premises No. 49, Jalan Tuanku Abdul Rahman, Kuala Lumpur, was determined at $600 per month; and

(b) An order of *mandamus* that the said Appeal Board for the Federal Capital of Kuala Lumpur to rehear and re-determine Rent Appeal No. 7 of 1968.

The applicants are relying on the affidavit of Tan Hin Sin affirmed on 5th June, 1970 where it is alleged that on 8th December, 1969, the Appeal Board for the Federal Capital of Kuala Lumpur reversed the order of the Rent Tribunal for the Federal Capital of Kuala Lumpur and decided that the fair rent of the premises in question should be a sum of $600 per month and that the decision of the appeal board was contrary to section 6(e) of the Control of Rent Act, 1966 and the evidence adduced, when it took into consideration the repairs carried out by the tenant. It is further alleged that the appeal board contrary to law and section 6(c) of the Control of Rent Act, 1966 took into consideration in the tenant's favour that the tenant had maintained the said controlled premises in good condition.

The respondent, Mr. Prabhulal G. Doshi, in his affidavit affirmed on 20th July, 1970 contended that —

(a) It is not on record that the appeal board had based its decision on or acted contrary to section 6(e) of the Control of Rent Act, 1966; and

(b) The evidence adduced in an inferior tribunal is not a matter to be considered by the honourable court in an application for an order of *certiorari* to quash or *mandamus*.

Referring to paragraph 9 of the applicants' affidavit, the respondent contends that section 6(c) is a legal ground to be considered in arriving at the fair rent of controlled premises and that the appeal board has acted according to law and within its jurisdiction in arriving at the decision.

The respondent further contended that —

(a) Both orders of *certiorari* and *mandamus* to quash are discretionary and that this honourable court will not grant such orders unless the appeal board has acted without or in excess of jurisdiction; and

(b) On the face of the record the appeal board has not acted without or in excess of its jurisdiction.

Mr. Kok Wee Kiat, counsel for the applicants, submitted that the decision of the appeal board (T.H.S. '2') forms part of the record and as there was an error on the face of the record *certiorari* will issue to remove the order into the High Court to be quashed. He cited *Rex* v. *Northumberland Compensation Appeal Tribunal, Ex-parte Shaw*[1] where it was held —

"as the tribunal had stated on the face of the order the grounds on which they had made it and as it appeared that in law those grounds were not such as to warrant the decision to which they had come, *certiorari* would issue to remove the order into the High Court to be quashed."

The decision, he said, was affirmed in *Rex* v. *Northumberland Compensation Appeal Tribunal, Ex-parte Shaw*.[2]

Mr. Kok argued that the appeal board in its decision had misconstrued section 6(c) of the Control of Rent Act, 1966. For convenience, I reproduce hereunder the whole of section 6 of the Act —

"6. For the purposes of determining the fair rent of any controlled premises under this Act, in addition to the factors referred to in sub-section (3) of section 5, the following factors shall be taken into consideration, namely —

(a) the location of the controlled premises in question:

(b) the age and character of the controlled premises;

(c) the state of repair of the controlled premises;

(d) the type of the controlled premises, that is, whether the premises is business or domestic premises; and

(e) any improvements made to the controlled premises by the tenant where such improvement was made with the written consent of the landlord.

Provided that nothing in this section shall entitle a tenant to ask to be taken into consideration any goodwill attached to the controlled premises by reason of any business carried on thereat by the tenant or his predecessors in title of such business."

The relevant part of the appeal board's decision states —

"The evidence adduced clearly shows that only items (i) and (iv), the location and character of the premises are in favour of the landlord. Under the circumstances we are of the view that the Rent Tribunal had erred in allowing the maximum increase of one hundred per cent and in not giving due consideration to the fact that the premises was over 60 years old and that the tenant had carried out substantial repairs and maintained the premises in a good condition."

The applicants contend that section 6(c) of the Act should be construed in favour of the applicants as the appeal board had held that the tenant had carried out substantial repairs and maintained the premises in a good condition. The applicants say that section 6(c) of the Act is tied up with section 6(e). It is the contention of the applicants that where no terms as to repairs are provided, it becomes the tenant's responsibility to repair. That may be so, but it is not for this court to determine, in dealing with this application, the responsibility of any party as regards repair. Primarily it is for this court to consider whether there is any error of law on the face of the record. In any event, there is nothing on record to show whose responsibility it is to repair.

The appeal board quite properly took into consideration matters which by law may properly be taken into account. If that was what the board had done, I am unable to see how the applicants' counsel can be heard to say that the board acted contrary to law. The applicants' counsel has also failed to show that the board has acted contrary to section 6(e) or otherwise than in accordance with the law. There is no way of reading the minds of the board and this court cannot go behind the record and assume something which is not disclosed from the record.

On the face of the record, there is nothing to indicate that the board, in considering the fact that the tenant had carried out substantial repairs and maintained the premises in a good condition in favour of the respondent, had done so erroneously to warrant the issue of an order of *certiorari*.

Mr. S. Y. Chan, counsel for the respondent, quite rightly pointed out that the relief sought by way of *certiorari* will be open where the board is shown to have acted otherwise than in accordance with the law and outside its jurisdiction. Referring to *Rex* v. *Northumberland Compensation Appeal Tribunal, Ex-parte Shaw, supra*, it is argued that in that case, there was a manifest error of law. This is clear from the finding of the court when it held that —

"on the true construction of the National Service (Transfer of Officers and Compensation) Regulations, 1948, reg. 2, the applicant's service with the local authority should have been taken into account."

Mr. Chan further referred to me *Rex* v. *Furnished Houses Rent Tribunal for Paddington and St. Marylebone, Ex-parte Kendal Hotels, Ltd.*[3] where it was held that —

"*certiorari* does not lie to bring up and quash a decision of a tribunal constituted under the Furnished Houses (Rent Control) Act, 1946, when the decision is good on its face and not outside the jurisdiction of the tribunal."

This case was followed in *Rex* v. *Agricultural Land Tribunal for the South Eastern Area, Ex-parte Bracey*[4] where it was held that —

"Where an inferior tribunal acting within its jurisdiction makes an error of law (e.g., in acting on no evidence or in acting on evidence which ought to have been rejected or in failing to take into consideration evidence which ought to have been considered), *certiorari* cannot be granted to quash the decision of the tribunal for that error of law unless the error appears on the face of the record, and the court, on application for *certiorari*, is not entitled to look behind the record or to receive evidence for that purpose."

In the present case, I am unable to conclude that, on the face of the record, the appeal board had acted erroneously and outside its jurisdiction and in my judgment, this application cannot succeed. I would therefore dismiss the application with costs.

Application dismissed.

Solicitors: *Mah & Kok; Sharikat S. Y. Chan.*

PARMESHIRI DEVI & ANOR. v. PURE LIFE SOCIETY

[O.C.J. (Abdul Hamid J.) September 25, 1970]

[Kuala Lumpur — Civil Suit No. 939 of 1966]

Trust — Alleged declaration of — Lease of school and premises free of rent in consideration of society maintaining and managing school — Whether effective declaration of trust.

The plaintiff in this case claimed the return of $179,400 and further or alternatively damages for breach of trust. The plaintiff had intended to perpetuate the memory of her late father, Lala Kishan Dial and had executed a lease of the Kishan Dial School and premises at Kandang Kerbau Road, Kuala Lumpur in favour of the defendant society free of yearly rent in consideration of the society maintaining and managing the school and premises and on the express conditions that the society shall continue to operate, manage and run the school in the name and style of the Kishan Dial School. Subsequently a piece of land was given to the society as a gift on the express condition that a new school was to be put up on the land by the society. The society began to collect funds for building the school on the new premises and partly from donations and partly from profits of the school, it had collected approximately $179,400. The society at its annual general meeting resolved to name the school